Tentative Rulings for May 24, 2016
Departments 402, 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

14CECG01296 ***Slyter v. Manco Abbott Inc*. is continued to Wednesday, May 25, 2016 at 3:30 in Dept. 402.**

14CECG03854 ***United Security Bank v. Ironhorse Development, Inc., et al*. is continued to Thursday, June 9, 2016, at 3:30 in Dept. 501.**

16CECG00394 ***Weidenbach v. Scott et al.* is continued to Thursday, May 26, 2016 at 3:30 p.m. in Dept. 501.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

(20) **Tentative Ruling**

Re: ***Moreno v. Dhami et al***, Superior Court Case No. 15CECG00055

Hearing Date: **May 24, 2016 (Dept. 402) - However, should Oral Argument be requested, the hearing will be held Wednesday the 25th at 3:30 p.m.**

Motion: Fresno Community Hospital and Medical Center's Motion for Summary Judgment or Summary Adjudication

Tentative Ruling:

To grant the motion for summary judgment. (Code Civ. Proc. § 437c(c).) Fresno Community Hospital and Medical Center to submit to this court, within 5 days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

As stated in the moving papers, defendant Fresno Community Hospital and Medical Center has established through expert testimony that it, and its employees, did not breach the standard of care on connection with their care of plaintiff. Fresno Community Hospital and Medical Center also shows that the physicians who rendered care to plaintiff at Fresno Community Hospital and Medical Center were not Fresno Community Hospital and Medical Center's agents or employees. Thus, Fresno Community Hospital and Medical Center is not liable for their negligence. Plaintiff filed a response stating that she does not oppose the motion. Accordingly, for the reasons stated in the moving papers, summary judgment should be granted in favor of Fresno Community Hospital and Medical Center.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JYH on 5/20/2016 .
(Judge's initials) (Date)

(28) **Tentative Ruling**

Re: **V.V. v. Blancas, et al.**

Case No. 15CECG02236

Hearing Date: **May 24, 2016 (Dept. 402) - However, should Oral Argument be requested, the hearing will be held Wednesday the 25th at 3:30 p.m.**

Motion: By Defendant Monson-Sultana Joint Union Elementary School District demurring to Plaintiff's First Amended Complaint

Tentative Ruling:

To sustain the demurrer to the Fifth, Sixth, and Seventh Causes of Action with leave to amend. Plaintiff shall have twenty days from the date of this order to file a Second Amended Complaint. All new or amended allegations shall be set forth in **boldface** typeset.

The Request for Judicial Notice is granted, except as to item numbers 7 and 10.

Explanation:

Defendant has demurred to the causes of action for Negligent Hiring, Supervision and Training on the grounds that the statute of limitations and the California Government Claims Act forecloses the causes of action as alleged against Defendant School District. Defendant has also filed a Request for Judicial Notice with respect to several items which Defendant contends are necessary for its Demurrer.

Request for Judicial Notice.

Defendant asks the Court to take notice of the following items:

1. Plaintiff filed his Tort Claim filed with the Monson-Sultana Joint Union Elementary School District ("DISTRICT") on March 24, 2015;
2. The DISTRICT rejected Plaintiff's Tort Claim as late on April 16, 2015;
3. The school year in public schools runs from July 1 of one year through and including June 30 of the following year;
4. The DISTRICT is an elementary school district only;
5. The students who attend the DISTRICT are all in eighth (8th) grade or below;
6. The 2007-2008 school year in the DISTRICT ended on June 30, 2008;
7. V.V. enrolled at and attended Dinuba High School beginning in the fall semester of 2008;

8. The 2008-2009 school year began on July 1, 2008;
9. Dinuba High School is not a school within the DISTRICT;
10. V.V. attended Dinuba High School for the entirety of the 2008-2009, 2009-2010, 2010-2011, and 2011-2012 school years until his graduation on May 25, 2012.

Defendant relies on Evidence Code §451, subdivisions (a) (decisional, constitutional and statutory law) and (f)(facts of generalized knowledge) and Evidence Code § 452, subdivisions (d)(1) (records of any court), (g) (facts and propositions of common knowledge in the territorial jurisdiction), and (h) (facts not reasonably subject to dispute capable of immediate and accurate determination by resort to sources of indisputable accuracy).

Among the items provided is a "true and correct copy" of V.V.'s alleged high school transcript which appears to show that V.V. attended Dinuba High School in the fall semester of 2008 through 2012. It appears to be authenticated by the custodian of records. However, there is no provision in Evidence Code § 451 or §452 that school transcripts are an item of which the Court can take judicial notice: they do not appear to fall under any of the allowable categories and Defendant has produced no other legal authority for their admission. Therefore, while the Request for Judicial Notice is granted as to the other items, it is denied with respect to item numbers 7 and 10.

Demurrer

A general demurrer admits the truth of all material allegations and a Court will "give the complaint a reasonable interpretation by reading it as a whole and all its parts in their context." (*People ex re. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 300.) The standard of pleading is very liberal and a plaintiff need only plead "ultimate facts." (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) However, a plaintiff must still plead facts giving some indication of the nature, source, and extent of the cause of action. (*Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719.)

The California Tort Claims Act ("TCA") requires that, normally, a tort claim be filed with the government agency no later than six months after the accrual of the cause of action. (Gov. Code §911.2.) For claims of sexual abuse occurring before January 1, 2009, compliance with the TCA is required pursuant to Government Code section 905, subdivision (m). However, for "conduct" occurring after January 1, 2009, a plaintiff is excused from the TCA requirements and Civil Procedure section 340.1 applies. (Gov. Code §905, subd.(m).)

In general, accrual for instances of sexual abuse occurring before the age of majority is covered by Code of Civil Procedure section 340.1, which states, in pertinent part:

> In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological

injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later.

This applies both to actions against the person committing the act as well as against any entity that owed a duty of care to the plaintiff. (Civ.Proc. §340.1, subd.(a)(1) & (2).)

However, it must be noted that Civil Procedure §340.1 "extends the time during which a victim of childhood sexual abuse may sue, but it does not alter the cause of action's accrual date, which is when the molestation occurred subject to any applicable delayed discovery." (*S.M. v. Los Angeles School District* (2010) 184 Cal.App.4th 712, 721.) Thus, the key inquiry is whether the plaintiff had knowledge of the injury and when the injury occurred. (*Id.* at 717.)

Here, in the First Amended Complaint, Plaintiff seeks to overcome that requirement by alleging that the purported tortious behavior was "continuous," insofar as it began in approximately Fall of 2005 and was allegedly continuing until just before Defendant Blancas was arrested in 2012. (FAC ¶¶ 2&16.)

Defendant School District argues that it cannot be liable for this "continuous" behavior because Plaintiff was not a student at a school that was part of the district after January 1, 2009. However, as set forth above, this contention is based on evidence that this Court cannot take judicial notice of. Nevertheless, even if the Court were to take judicial notice that Plaintiff was no longer a student at the school district after 2008, the demurrer would not be sustained on this ground.

Defendant argues that there is no conduct on the part of school district alleged in the complaint after 2009, and that it would be impossible to do so because Plaintiff was no longer enrolled with the district.

Plaintiff's main response to this is to rely on the "continuous violation" doctrine- that in the case of "continuous" sexual abuse, the date of accrual extends until the last date of such abuse. (*Ortega v. Parjaro Valley Unified School District* (1998) 64 Cal.App.4th 1023, 1053-54; *K.J. v. Arcadia Unified School District* (2009) 172 Cal.App.4th 1229, 1239.) Defendant concedes that this is the general rule. (Reply Brief at pp.3-4.)

However, Defendant School District relies on the Penal Code definition for "continuous sexual abuse of a child" based in Penal Code §288.5, subdivision (a), for the proposition that, in a civil case, the continuous violation doctrine for sexual abuse of a minor only applies is if the minor is under 14 and the perpetrator resides in the same home or "has recurring access to the child." Defendant School District provides no authority for why this Court should resort to the Penal Code for determining ways to limit the liability for child abuse cases, nor does there appear to be any. In fact, neither *Ortega* nor *K.J.* refer to the Penal Code in determining liability.

Here, Plaintiff has alleged that the abuse was continuous through 2012. Even if Plaintiff was no longer enrolled in Defendant's school district, the time within which to bring the action does not finish accruing until the last date of such abuse. Therefore, the

cause of action as a whole did not "finish accruing" until the abuse stopped, which the First Amended Complaint alleges did not occur until 2012. (FAC ¶2.)

As a result, the conduct continued until after January 1, 2009, and the provisions of Government Code §905, subdivision (m) and Civil Procedure §340.1 apply to this case, and the demurrer cannot be sustained on statute of limitations grounds.

However, as Defendant School District has noted, in order to claim entitlement to this general rule of accrual, a plaintiff must allege facts to support the exception. (*See Financial Corp. of Am. V. Wilburn* (1987) 189 Cal.App.3d 764, 769.) Other than the bare allegation that the actions were "continuous" in nature (FAC ¶¶ 2, 23), Plaintiff here has provided no facts of any incidents by Defendant Blancas to support the allegations that the behavior continued through 2012.

Therefore, the demurrer to the Fifth, Sixth, and Seventh Causes of Action should be sustained with leave to amend to allege facts that support the allegations of continuous violations.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JYH on 5/20/2016 .
(Judge's initials) (Date)

(28) **Tentative Ruling**

Re: ***GE Capital Information Technology Solutions, LLC v. Central Valley Presort, Inc.***

Case No. 15CECG01006

Hearing Date: **May 24, 2016 (Dept. 402) - However, should Oral Argument be requested, the hearing will be held Wednesday the 25th at 3:30 p.m.**

Motion: By Plaintiff to Amend Judgment "Nunc Pro Tunc" to include "The Presort Center of Fresno, LLC" as a proper defendant.

Tentative Ruling:

To deny the motion without prejudice.

Explanation:

Plaintiff has filed a motion it calls a Motion to Amend the Judgment "Nunc Pro Tunc." However, a "Nunc Pro Tunc" motion refers specifically to where a court may "correct a clerical, as distinguished from a judicial error which appears on the face of a decree." (*In re Marriage of Padgett* (2009) 172 Cal.App.4th 830, 852.) This is not the kind of motion that Plaintiff is making.

In the Notice of Motion, Plaintiff indicates that it is seeking to amend the judgment pursuant to Code of Civil Procedure §187 on the grounds that "The Presort Center of Fresno, LLC" is the alter ego of "Central Valley Presort, Inc." However, alter ego liability is appropriate only where the party to be added was, in fact, controlling the litigation. (*See, e.g., Minton v. Cavaney* (1961) 56 Cal.2d 576, 581 (alter ego doctrine requires control of litigation); *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 517.) This is difficult to do where, as it appears here, the corporation in question was not in existence until after the litigation commenced.

Instead, the theory that appears to be presented by Plaintiff's evidence is not "alter ego" liability, but rather "successor liability." (*McClellan v. Northridge Park Townhome Owners Ass'n, Inc.* (2001) 89 Cal. App. 4th 746, 753-55 (discussing parameters and requirements for successor liability).)

Nevertheless, even if Plaintiff had presented that issue in this motion, this Court must have jurisdiction over the proposed new party to the judgment before it can grant any amendment of the judgment to include that party. (*Milrot v. Stamper Medical Corp.* (1996) 44 Cal.App.4th 182, 186 (amended judgment set aside where court never

had jurisdiction over new party: "Normally jurisdiction is acquired by service.").) Here, the proof of service lists the counsel of record for Central Valley Presort, Inc., but no proof of service for The Presort Center of Fresno, LLC. Accordingly, the Court has no jurisdiction over The Presort Center of Fresno, LLC.

Therefore, the motion is denied without prejudice to a motion made on proper legal grounds and after the Court has obtained jurisdiction over the proposed party.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JYH on 5/20/2016 .
(Judge's initials) (Date)

Tentative Rulings for Department 403

(27) **Tentative Ruling**

Re: ***Abedi v. Ghanouni***
Superior Court Case No. 15CECG02231

Hearing Date: **May 24, 2016 (Dept. 403)**

Motion: Cross Defendants Benham Abedi and Negar Daneshjoo's Demurrer to the Second Amended Cross Complaint; Plaintiff Benham Abedi's Motion for Judgment on the Pleadings with respect to the first and second causes of action in the complaint

Tentative Ruling:

To sustain the demurrer to the Second Amended Cross Complaint without leave to amend as to Cross Defendant Benham Abedi. (CCP § 430.10(e).)

To sustain the demurrer to the Second Amended Cross Complaint as to Cross Defendant Negar Daneshjoo. (CCP § 430.10(g).) Leave to amend is granted. Cross Complainant Laleh Ghanouni is granted 10 days leave to file the third amended cross complaint. The time in which the cross complaint can be amended will run from service by the clerk of the minute order. New allegations in the third amended cross complaint are to be set in **boldface** type.

To Grant Plaintiff Benham Abedi's motion for judgment on the pleadings as to the first two causes of action asserted in the complaint. Plaintiff Benham Abedi shall submit to the court a proposed order within 7 days of service of the minute order by the clerk.

IF ORAL ARGUMENT IS REQUESTED, IT WILL BE ENTERTAINED AT 3:00 PM ON THURSDAY, MAY 26, 2016, IN DEPARTMENT 403.

Explanation:

Although it names him as a cross defendant, the Second Amended Cross Complaint asserts no allegations toward Benham Abedi. Thus, with no allegations sufficient to state a cause of action, the demurrer is sustained without leave to amend as to Cross Defendant Benham Abedi only. (CCP § 430.10(e).)

The Second Amended Cross Complaint does not allege whether the contract was written, oral or implied by conduct. (CCP § 430.10(g).) Accordingly, the demurrer is sustained on this ground as to Cross Defendant Negar Daneshjoo with leave to amend.

As there was no opposition to the motion for judgment on the pleadings, the motion is granted.

Pursuant to Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 05/23/16 .
(Judge's initials) (Date)

Tentative Rulings for Department 501

2 **Tentative Ruling**

Re: ***American Builders & Contractor Supply Co., Inc. v. Fryer Roofing Co., Inc. et al.***
Superior Court Case No. 14CECG01643

Hearing Date: May 24, 2016 (Dept. 501)

Motion: Leave to File a First Amended Complaint

Tentative Ruling:

To grant Plaintiff's motion for leave to file a first amended complaint. Plaintiff has 10 days to file the 1st amended complaint. The time in which the complaint can be amended will run from service by the clerk of the minute order. All new allegations in the first amended complaint are to be set in **boldface** type.

Explanation:
Allowing the filing of the proposed 1st amended complaint will further the strong judicial policy favoring liberal amendments so that all related disputed matters can be resolved in the same lawsuit. See ***Nestle v. Santa Monica*** (1972) 6 Cal.3d 920.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: MWS on 5/23/16 .
(Judge's initials) (Date)

(17) **Tentative Ruling**

Re: ***Lafuente v. Garcia et al.***
Court Case No. 15 CECG 02494

Hearing Date: May 24, 2016 (Dept. 501)

Motion: Plaintiffs' Motion to Strike Cross-Complaint

Tentative Ruling:

To grant. The cross-complaint filed March 18, 2016 is hereby stricken.

Explanation:

The trial court "may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: [¶] ... [¶] (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.." (Code Civ. Proc., § 436; *CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145.)

A party must file a cross-complaint against any of the parties who filed the complaint or cross-complaint against him or her before or at the same time as the answer to the complaint or cross-complaint. (Civ. Proc. Code, § 428.50, subd. (a).) Any other cross-complaint may be filed at any time before the court has set a date for trial. (Civ. Proc. Code, § 428.50, subd. (b).) A party must obtain leave of court to file any cross-complaint except one filed within the time specified. (Civ. Proc. Code, § 428.50, subd. (c), referring to *id*., subds. (a), (b).) Leave may be granted in the interest of justice at any time during the course of the action. (*Ibid*.) An untimely cross-complaint filed without court permission may be stricken. (*U. S. Nat. Bank of San Diego v. Bank of America Nat. Trust & Sav. Ass'n* (1963) 214 Cal.App.2d 74, 76.)

Here, the cross-complaint is clearly untimely. By failing to oppose this motion, defendants concede this. Defendants answered on November 12, and November 18, 2015. The trial date was assigned on December 7, 2015 and defendants' cross-complaint was filed without leave of court on March 18, 2016. The cross-complaint is hereby stricken.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: MWS on 5/20/16 .
(Judge's initials) (Date)

Tentative Rulings for Department 502

Tentative Rulings for Department 503

(17)

Tentative Ruling

Re: ***Norton v. Boghosian Raisin Packing Company, Inc.***
Court Case No. 15 CECG 01220

Hearing Date: May 24, 2016 (Dept. 503)

Motion: Motion to Strike Doe Amendment

Tentative Ruling:

To grant.

Explanation:

A trial court may, "at any time in its discretion ... [s]trike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436, subd. (b).) Pursuant to Code of Civil Procedure section 472, a plaintiff has the right to amend his or her complaint once, without leave of court, after a demurrer is filed and before the demurrer is heard. Code of Civil Procedure section 473, subdivision (a)(1), mandates leave of court for further amendment.

Code of Civil Procedure section 474 provides that "[w]hen the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint … and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly…" Such a Doe amendment, if not done in accordance with section 472, must be done by leave of court. Indeed, Fresno Superior Court, Local Rule 2.7.2 proscribes that Doe amendments are to be heard as ex parte matters, albeit without hearings.

Thus, the Doe amendment filed March 29, 2016, without leave of this court must be stricken as improperly filed.

Plaintiff may seek leave of court to refile the amendment, however, as "the courts of this state have considered noncompliance with the party substitution requirements of section 474 as a procedural defect that could be cured and have been lenient in permitting rectification of the defect." (*Woo v. Superior Court* (1999) 75 Cal.App.4th 169, 177, citing *Streicher v. Tommy's Electric Co*. (1985) 164 Cal.App.3d 876, 884-885.)

The court declines the invitation to address the merits of whether plaintiff was truly ignorant of Spherion Staffing, LLC's role in his claimed injuries. "Where a complaint sets forth ... a cause of action against a defendant designated by fictitious name and

his true name is thereafter discovered and substituted by amendment, he is considered a party to the action from its commencement" if both pleadings seek relief on the same general set of facts. (*Austin v. Massachusetts Bonding & Insurance Co*. (1961) 56 Cal.2d 596, 599; Code Civ. Proc., § 474.) However, unreasonable delay in filing an amendment after acquiring actual knowledge of the Doe defendant's identify can bar a plaintiff's resort to the fictitious name procedure. (*Smeltzley v. Nicholson Mfg. Co*. (1977) 18 Cal.3d 932, 938–939.) "[A] defendant named in an action by a Doe amendment ... may challenge the amendment by way of an evidence-based motion, which argues that the plaintiff 'unreasonabl[y] delayed' ... filing of the challenged amendment. '[U]nreasonable delay' ... includes a prejudice element, which requires a showing by the defendant that he or she would suffer prejudice from plaintiff's delay...." (*A.N. v. County of Los Angeles* (2009) 171 Cal.App.4th 1058, 1067.)

It is for Spherion to challenge the Doe amendment, not Boghosian Raisin.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: A.M. Simpson on 5/19/16 .
(Judge's initials) (Date)

(29) **Tentative Ruling**

Re: ***Brian Gwartz, et al. v. Dowling Aaron, Inc., et al.***
Superior Court Case No. 15CECG03230

Hearing Date: May 24, 2016 (Dept. 503)

Motion: Strike portions of second amended complaint

Tentative Ruling:

To grant, with leave to amend. (Code Civ. Proc. §431.10(b).)

Explanation:

Motion to Strike:

A motion to strike is the proper procedure to challenge an improper request for relief, or improper remedy, within a complaint. (Code Civ. Proc. §431.10(b); *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166-167.)

Emotional Damages/Legal Malpractice:

Generally speaking, an attorney's liability in a legal malpractice action is for damages directly caused by the attorney's negligence. (*Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037, 1045; see also *Viner v. Sweet* (2003) 30 Cal.4th 1232, 1241.) The mere probability that a certain event would have happened, upon which a claim for legal malpractice damages is predicated, will not support a claim or furnish the foundation of an action for such damages. (*Filbin v. Fitzgerald* (2012) 211 Cal.App.4th 154, 166-167.) Plaintiff must introduce evidence showing that it is more likely than not that the alleged legal malpractice was a cause in fact of the result of which the plaintiff complains; in the context of legal malpractice, "the elements of causation and damage are particularly closely linked." (*Hecht, Solberg, Robinson, Goldberg & Bagley v. Superior Court* (2006) 137 Cal.App.4th 579, 591; see also *Marshak v. Ballesteros* (1999) 72 Cal.App.4th 1514, 1518; *Ventura County Humane Society v. Holloway* (1974) 40 Cal.App.3d 897, 907; *Agnew v. Parks* (1959) 172 Cal.App.2d 756, 768.)

Though intentional torts will support an award of damages for emotional distress alone, this is only in cases involving extreme and outrageous intentional invasions of plaintiff's mental and emotional tranquility. (*Molien v. Kaiser Foundation Hospitals* (1980) 27 Cal.3d 916, 927; see also see also *McDaniel v. Gile* (1991) 230 Cal.App.3d 363 [attorney's delaying and withholding of legal services to gain sexual favors from client is "outrageous conduct" supporting emotional distress damages]; *Holliday v. Jones* (1989) 215 Cal.App.3d 102 [emotional distress damages appropriate where alleged malpractice resulted in plaintiff being convicted of manslaughter and incarcerated].)

In the instant case, Plaintiffs assert that the primary right they seek to vindicate is not financial, but emotional, based on Plaintiffs' right to use the Parlier property for Plaintiff Gwartz's training. Plaintiff Gwartz clearly articulates his disappointment; however, the acts allegedly giving rise to such disappointment do not rise to the level of egregiousness that has been required to support emotional distress damages. (See *McDaniel*, supra, 230 Cal.App.3d 363; *Molien*, supra, 27 Cal.3d 916; *Holliday*, supra, 215 Cal.App.3d 102.) Plaintiff Gwartz's inability to train for team tryouts was not caused by the alleged legal malpractice of Defendants, but rather by the misrepresentations of the seller from whom Plaintiffs purchased the Parlier property, and the seller's apparent refusal to make repairs to the structures on the property. Moreover, whether Plaintiff Gwartz would in fact have tried out for a place on the U.S. Equestrian Team is speculative. Plaintiffs' contention that Defendants engaged in legal malpractice is insufficient to establish moral blame for Plaintiff Gwartz's unrealized lifelong goal; that Plaintiff Gwartz was unable to train at the Parlier property and try out for the team was due to the seller's acts, not Defendants'. Plaintiffs do not establish that the unusable state of the Parlier property, or a lack of available alternate training locations, was due to Defendants' alleged legal malpractice. Accordingly, Defendants' motion to strike portions of the second amended complaint is granted, with leave to amend. Plaintiffs to be mindful of the fact that leave to amend will not be granted indefinitely.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: A.M. Simpson on 5/20/16 .
(Judge's initials) (Date)